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VERIGY US, INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION
14

15 VERIGY US, INC, a Delaware Corporation

16 Plaintiff,

17 vs.

18 ROMI OMAR MAYDER, an individual;
WESLEY MAYDER, an individual; SILICON
19 TEST SYSTEMS, INC., a California Corporation;
and SILICON TEST SOLUTIONS, LLC, a
20 California Limited Liability Corporation,
inclusive,

21 Defendants.
22

23 AND RELATED CROSS ACTIONS
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Case No. C07 04330 RMW (HRL)

**VERIGY'S OBJECTIONS TO EVIDENCE
SUBMITTED BY WES MAYDER IN
SUPPORT OF MOTIONS FOR SUMMARY
JUDGMENT AND RULE 11 SANCTIONS**

Date: September 5, 2008
Time: 9:00 am
Ctrm.: 6
Judge: Hon. Ronald M. Whyte

Complaint Filed: August 22, 2007
Trial Date: None Set

1 Plaintiff Verigy US, Inc. (“Verigy”) hereby objects to the following evidence submitted by
 2 defendant Wesley Mayder in support of his motion for summary judgment currently set for
 3 hearing on September 5, 2008 before the above-named Court.

4 **A. DECLARATION OF WESLEY MAYDER IN SUPPORT OF MOTION FOR**
 5 **SUMMARY JUDGMENT, ETC. (Docket No. 230-9)**

6 **OBJECTION NO. 1:** Verigy objects to and moves to strike the entire Declaration of
 7 Wesley Mayder because such declaration as submitted to the Court was not signed or sworn by
 8 him under penalty of perjury, nor has Wesley Mayder’s counsel served a signed version of the
 9 declaration despite promise to do so. **Grounds for Objection:** An unsigned and unsworn
 10 declaration is not evidence. *See, Mason v. Clark*, 920 F.2d 493, 495 (8th Cir. 1990) (“[A]n
 11 unsigned affidavit is a contradiction in terms. By definition an affidavit is a ‘sworn statement . . .
 12 made under an oath . . .’”).

13 **OBJECTION NO. 2:** Verigy objects to and moves to strike portions of the Declaration of
 14 Wesley Mayder insofar as Wesley Mayder retracted such testimony in his deposition on July 8,
 15 2008. (*See, Gagliardi Decl.*, ¶ 2 and Ex. A (pertinent portions of deposition transcript of Wesley
 16 Mayder).) **Grounds for Objection:** The testimony retracted and disowned by Wesley Mayder
 17 should be stricken because he has admitted under oath that it is false. (*See, Gagliardi Decl.*, ¶ 2
 18 and Ex. A (pertinent portions of deposition transcript of Wesley Mayder).) A party cannot
 19 substitute a declaration on summary judgment for deposition testimony made during discovery.
 20 *School District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir.
 21 1993).

22 **OBJECTION NO. 3:** Verigy objects to and moves to strike portions of the Declaration of
 23 Wesley Mayder insofar as Wesley Mayder contradicted such testimony in his deposition on July 8,
 24 2008. (*See, Gagliardi Decl.*, ¶ 2 and Ex. A (pertinent portions of deposition transcript of Wesley
 25 Mayder).) **Grounds for Objection:** The testimony contradicted by Wesley Mayder at his
 26 deposition should be stricken because a party cannot substitute a declaration on summary
 27 judgment for deposition testimony made during discovery. *School District No.1J, Multnomah*
 28 *County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

1 **OBJECTION NO. 4:** Verigy objects to and moves to strike the statement in Paragraph 1
 2 of the Declaration of Wesley Mayder: “I have no direct or indirect control over any of the
 3 defendants in this case.” **Grounds for Objection:** This statement is inherently false and
 4 misleading. Wesley Mayder is himself a defendant in this action and as such he has control over
 5 his own conduct.

6 **OBJECTION NO. 5:** Verigy objects to and moves to strike the statement in Paragraph 7
 7 of the Declaration of Wesley Mayder: “I am only a passive shareholder . . . in Silicon Test
 8 Systems, Inc. . . .” **Grounds for Objection:** This statement is contradicted by Wesley Mayder’s
 9 deposition testimony as well as contemporaneous documentation. (*See*, Gagliardi Decl., ¶ 2 and
 10 Ex. A (pertinent portions of deposition transcript of Wesley Mayder).) A party cannot substitute a
 11 declaration on summary judgment for deposition testimony made during discovery. *School*
 12 *District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

13 **OBJECTION NO. 6:** Verigy objects to and moves to strike the statement in Paragraph 9
 14 of the Declaration of Wesley Mayder: “I never agreed to become and never did become an active
 15 participant in STS LLC.” **Grounds for Objection:** This statement is contradicted by Wesley
 16 Mayder’s deposition testimony as well as contemporaneous documentation. (*See*, Gagliardi
 17 Decl., ¶ 2 and Ex. A (pertinent portions of deposition transcript of Wesley Mayder).) A party
 18 cannot substitute a declaration on summary judgment for deposition testimony made during
 19 discovery. *School District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255,
 20 1264 (9th Cir. 1993).

21 **OBJECTION NO. 7:** Verigy objects to and moves to strike the statement in Paragraph 9
 22 of the Declaration of Wesley Mayder: “I never signed the Operating Agreement . . .” **Grounds**
 23 **for Objection:** This statement is contradicted by Wesley Mayder’s deposition testimony as well
 24 as contemporaneous documentation. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of
 25 deposition transcript of Wesley Mayder).) A party cannot substitute a declaration on summary
 26 judgment for deposition testimony made during discovery. *School District No.1J, Multnomah*
 27 *County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

28 **OBJECTION NO. 8:** Verigy objects to and moves to strike the statement in Paragraph 11

1 of the Declaration of Wesley Mayder: “. . . I never signed the Operating Agreement . . .”

2 **Grounds for Objection:** This statement is contradicted by Wesley Mayder’s deposition
3 testimony as well as contemporaneous documentation. (*See*, Gagliardi Decl., ¶ 2 and Ex. A
4 (pertinent portions of deposition transcript of Wesley Mayder).) A party cannot substitute a
5 declaration on summary judgment for deposition testimony made during discovery. *School*
6 *District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

7 **OBJECTION NO. 9:** Verigy objects to and moves to strike the statement in Paragraph 12
8 of the Declaration of Wesley Mayder: “I never . . . was a director [of STS, Inc.] . . .” **Grounds**
9 **for Objection:** This statement is contradicted by contemporaneous documentation authenticated
10 by Wesley Mayder at his deposition. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of
11 deposition transcript of Wesley Mayder).) A party cannot substitute a declaration on summary
12 judgment for deposition testimony made during discovery. *School District No.1J, Multnomah*
13 *County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

14 **OBJECTION NO. 10:** Verigy objects to and moves to strike statements in Paragraph 14
15 of the Declaration of Wesley Mayder regarding what Wesley Mayder believes are appropriate as
16 grounds for a lawsuit. **Grounds for Objection:** Wesley Mayder lacks foundation to offer an
17 expert legal opinion as to the appropriate grounds for a lawsuit in federal court.

18 **OBJECTION NO. 11:** Verigy objects to and moves to strike the statement in Paragraph
19 15 of the Declaration of Wesley Mayder: “In mid-December 2006, Romi [Mayder] sent me an
20 email asking if I knew someone who could provide some verification of dates applicable to his lab
21 notebook.” **Grounds for Objection:** This statement is contradicted by Wesley Mayder’s
22 deposition testimony as well as contemporaneous documentation concerning when the email was
23 sent and received. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of deposition transcript
24 of Wesley Mayder).) A party cannot substitute a declaration on summary judgment for deposition
25 testimony made during discovery. *School District No.1J, Multnomah County, Oregon v.*
26 *ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

27 **OBJECTION NO. 12:** Verigy objects to and moves to strike the statement in Paragraph
28 15 of the Declaration of Wesley Mayder: “I never directed Jon Davidson to do anything false . . .”

1 **Grounds for Objection:** This statement is contradicted by Wesley Mayder's deposition
 2 testimony as well as contemporaneous documentation that Romi Mayder asked Wesley Mayder to
 3 have Jon Davidson backdate his lab notebook and that Wesley Mayder complied. (*See*, Gagliardi
 4 Decl., ¶ 2 and Ex. A (pertinent portions of deposition transcript of Wesley Mayder).) A party
 5 cannot substitute a declaration on summary judgment for deposition testimony made during
 6 discovery. *School District No. 1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255,
 7 1264 (9th Cir. 1993).

8 **OBJECTION NO. 13:** Verigy objects to and moves to strike the statement in Paragraph
 9 16 of the Declaration of Wesley Mayder: “. . . neither I nor WeDirect has ever hosted any website
 10 for STS, Inc. or for Romi [Mayder] . . .” **Grounds for Objection:** This statement is contradicted
 11 by Wesley Mayder's deposition testimony as well as contemporaneous documentation. (*See*,
 12 Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of deposition transcript of Wesley Mayder).) A
 13 party cannot substitute a declaration on summary judgment for deposition testimony made during
 14 discovery. *School District No. 1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255,
 15 1264 (9th Cir. 1993).

16 **OBJECTION NO. 14:** Verigy objects to and moves to strike Paragraph 18 of the
 17 Declaration of Wesley Mayder. **Grounds for Objection:** Wesley Mayder lacks foundation as to
 18 what investigation or lack thereof was undertaken by Verigy prior to instituting this litigation.
 19 Further, Wesley Mayder's personal speculative belief as to whether Verigy sued him by mistake
 20 or as to Verigy's motives for suing Wesley Mayder is immaterial and irrelevant.

21 **OBJECTION NO. 15:** Verigy objects to and moves to strike Paragraph 21 of the
 22 Declaration of Wesley Mayder. **Grounds for Objection:** This paragraph is inappropriate legal
 23 argument masquerading as testimonial evidence.

24 **OBJECTION NO. 16:** Verigy objects to and moves to strike Paragraph 22 of the
 25 Declaration of Wesley Mayder. **Grounds for Objection:** This paragraph is inappropriate legal
 26 argument masquerading as testimonial evidence.

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1 **B. SUPPLEMENTAL DECLARATION OF WESLEY MAYDER IN SUPPORT**
 2 **OF MOTION FOR SUMMARY JUDGMENT, ETC. (Docket No. 230-21)**

3 **OBJECTION NO. 1:** Verigy objects to and moves to strike the entire Supplemental
 4 Declaration of Wesley Mayder because such declaration as submitted to the Court was not signed
 5 or sworn by him under penalty of perjury, nor has Wesley Mayder's counsel served a signed
 6 version of the declaration despite promise to do so. **Grounds for Objection:** An unsigned and
 7 unsworn declaration is not evidence. *See, Mason v. Clark*, 920 F.2d 493, 495 (8th Cir. 1990)
 8 ("[A]n unsigned affidavit is a contradiction in terms. By definition an affidavit is a 'sworn
 9 statement . . . made under an oath . . .').

10 **OBJECTION NO. 2:** Verigy objects to and moves to strike portions of the Supplemental
 11 Declaration of Wesley Mayder insofar as Wesley Mayder retracted such testimony in his
 12 deposition on July 8, 2008. (See, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of deposition
 13 transcript of Wesley Mayder).) **Grounds for Objection:** The testimony retracted and disowned
 14 by Wesley Mayder should be stricken because he has admitted under oath that it is false.

15 **OBJECTION NO. 3:** Verigy objects to and moves to strike portions of the Supplemental
 16 Declaration of Wesley Mayder insofar as Wesley Mayder contradicted such testimony in his
 17 deposition on July 8, 2008. (See, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of deposition
 18 transcript of Wesley Mayder).) **Grounds for Objection:** The testimony contradicted by Wesley
 19 Mayder at his deposition should be stricken because a party cannot substitute a declaration on
 20 summary judgment for deposition testimony made during discovery. *School District No.1J,*
 21 *Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

22 **OBJECTION NO. 4:** Verigy objects to and moves to strike the statement in Paragraph 4
 23 of the Supplemental Declaration of Wesley Mayder: "I am a passive shareholder in Silicon Test
 24 Systems, Inc. . . ." **Grounds for Objection:** This statement is contradicted by Wesley Mayder's
 25 deposition testimony as well as contemporaneous documentation. (See, Gagliardi Decl., ¶ 2 and
 26 Ex. A (pertinent portions of deposition transcript of Wesley Mayder).) A party cannot substitute a
 27 declaration on summary judgment for deposition testimony made during discovery. *School*
 28 *District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

1 **OBJECTION NO. 5:** Verigy objects to and moves to strike the statements in Paragraph 5
 2 of the Supplemental Declaration of Wesley Mayder: “I am a passive . . . shareholder in STS. I am
 3 not . . . a director of STS and I have never been in any such role in STS.” **Grounds for**
 4 **Objection:** This statement is contradicted by Wesley Mayder’s deposition testimony as well as
 5 contemporaneous documentation. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of
 6 deposition transcript of Wesley Mayder).) A party cannot substitute a declaration on summary
 7 judgment for deposition testimony made during discovery. *School District No.1J, Multnomah*
 8 *County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

9 **OBJECTION NO. 6:** Verigy objects to and moves to strike the statement in Paragraph 9
 10 of the Supplemental Declaration of Wesley Mayder: “. . . I have no role in my brother’s [Romi
 11 Mayder’s] companies except as a minority shareholder.” **Grounds for Objection:** This
 12 statement is contradicted by Wesley Mayder’s deposition testimony as well as contemporaneous
 13 documentation. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of deposition transcript
 14 of Wesley Mayder).) A party cannot substitute a declaration on summary judgment for deposition
 15 testimony made during discovery. *School District No.1J, Multnomah County, Oregon v.*
 16 *ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

17 **OBJECTION NO. 7:** Verigy objects to and moves to strike the statement in Paragraph 11
 18 of the Supplemental Declaration of Wesley Mayder: “I did not require or request that Jon
 19 Davidson . . . do anything false . . .” **Grounds for Objection:** This statement is contradicted by
 20 Wesley Mayder’s deposition testimony as well as contemporaneous documentation. (*See*,
 21 Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of deposition transcript of Wesley Mayder).) A
 22 party cannot substitute a declaration on summary judgment for deposition testimony made during
 23 discovery. *School District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255,
 24 1264 (9th Cir. 1993).

25 **OBJECTION NO. 8:** Verigy objects to and moves to strike the statement in Paragraph 12
 26 of the Supplemental Declaration of Wesley Mayder: “As a passive minority shareholder of STS . .
 27 .” **Grounds for Objection:** This statement is contradicted by Wesley Mayder’s deposition
 28 testimony as well as contemporaneous documentation. (*See*, Gagliardi Decl., ¶ 2 and Ex. A

(pertinent portions of deposition transcript of Wesley Mayder).) A party cannot substitute a declaration on summary judgment for deposition testimony made during discovery. *School District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

OBJECTION NO. 9: Verigy objects to and moves to strike the statement in Paragraph 12 of the Supplemental Declaration of Wesley Mayder: “I simply do not understand how I can rightfully be a defendant in this case . . .” **Grounds for Objection:** Immaterial and irrelevant.

OBJECTION NO. 10: Verigy objects to and moves to strike the statement in Paragraph 12 of the Supplemental Declaration of Wesley Mayder: “I request dismissal from this case.”

Grounds for Objection: This statement is inappropriate legal argument masquerading as testimonial evidence.

C. DECLARATION OF JOHN DAVIDSON IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, ETC. (Docket No. 230-8)

OBJECTION NO. 1: Verigy objects to and moves to strike the entire Declaration of Jon Davidson because such declaration as submitted to the Court was not signed or sworn by him under penalty of perjury. **Grounds for Objection:** An unsigned and unsworn declaration is not evidence. *See, Mason v. Clark*, 920 F.2d 493, 495 (8th Cir. 1990) (“[A]n unsigned affidavit is a contradiction in terms. By definition an affidavit is a ‘sworn statement . . . made under an oath . . .’”).

OBJECTION NO. 2: Verigy objects to and moves to strike portions of the Declaration of Jon Davidson insofar as Jon Davidson retracted such testimony in his deposition on July 8, 2008. (See, Gagliardi Decl., ¶ 3 and Ex. B (pertinent portions of deposition transcript of John Davidson).) **Grounds for Objection:** The testimony retracted and disowned by John Davidson should be stricken because he has admitted under oath that it is false.

OBJECTION NO. 3: Verigy objects to and moves to strike portions of the Declaration of Jon Davidson insofar as Jon Davidson contradicted such testimony in his deposition on July 8, 2008. (See, Gagliardi Decl., ¶ 3 and Ex. B (pertinent portions of deposition transcript of Jon Davidson).) **Grounds for Objection:** The testimony contradicted by Jon Davidson at his deposition should be stricken because a party cannot substitute a declaration on summary

1 judgment for deposition testimony made during discovery. *School District No.1J, Multnomah*
 2 *County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

3 **OBJECTION NO. 4:** Verigy objects to and moves to strike the statement in Paragraph 7
 4 of the Declaration of Jon Davidson: “In mid-December 2006, Romi [Mayder] sent me an email to
 5 Wesley [Mayder] asking about obtaining verification of dates applicable to his lab notebook.”

6 **Grounds for Objection:** This statement is contradicted by Wesley Mayder’s deposition
 7 testimony as well as contemporaneous documentation concerning when the email was sent and
 8 received. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of deposition transcript of
 9 Wesley Mayder).) A party cannot substitute a declaration on summary judgment for deposition
 10 testimony made during discovery. *School District No.1J, Multnomah County, Oregon v.*
 11 *ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).).

12 **OBJECTION NO. 5:** Verigy objects to and moves to strike the statement in Paragraph 7
 13 of the Declaration of Jon Davidson: “Wesley [Mayder] never directed me to do anything false . .
 14 .” **Grounds for Objection:** This statement is contradicted by Wesley Mayder’s deposition
 15 testimony as well as contemporaneous documentation that Jon Davidson was asked to backdate
 16 Romi Mayder’s notebook. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of deposition
 17 transcript of Wesley Mayder).) A party cannot substitute a declaration on summary judgment for
 18 deposition testimony made during discovery. *School District No.1J, Multnomah County, Oregon*
 19 *v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).).

20 **OBJECTION NO. 6:** Verigy objects to and moves to strike the statement in Paragraph 8
 21 of the Declaration of Jon Davidson: “Wesley [Mayder] had not control over me regarding this
 22 activity [backdating Romi Mayder’s notebook].” **Grounds for Objection:** This statement is
 23 contradicted by Wesley Mayder’s deposition testimony as well as contemporaneous
 24 documentation concerning when the email was sent and received. (*See*, Gagliardi Decl., ¶ 2 and
 25 Ex. A (pertinent portions of deposition transcript of Wesley Mayder).) A party cannot substitute a
 26 declaration on summary judgment for deposition testimony made during discovery. *School*
 27 *District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).).

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OBJECTION NO. 7: Verigy objects to and moves to strike the statement in Paragraph 9 of the Declaration of Jon Davidson: “Without first asking me any questions about the lab notebook or about my discussions with Romi [Mayder] in 2007, Verigy filed a complaint including against Wesley [Mayder].” **Grounds for Objection:** Immaterial and irrelevant whether Jon Davidson was interviewed by Verigy prior to the inception of litigation. Also, this statement is inappropriate legal argument masquerading as testimonial evidence. The fact of the complaint against Wesley Mayder is a matter of public record of which the Court can take judicial notice; the remainder of this paragraph is embroidered argument.

OBJECTION NO. 8: Verigy objects to and moves to strike Paragraph 10 of the Declaration of Jon Davidson. **Grounds for Objection:** Immaterial and irrelevant.

D. DECLARATION OF ROMI MAYDER IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, ETC. (Docket No. 230-15)

OBJECTION NO. 1: Verigy objects to and moves to strike the entire Declaration of Romi Mayder because such declaration as submitted to the Court was not signed or sworn by him under penalty of perjury. **Grounds for Objection:** An unsigned and unsworn declaration is not evidence. *See, Mason v. Clark*, 920 F.2d 493, 495 (8th Cir. 1990) (“[A]n unsigned affidavit is a contradiction in terms. By definition an affidavit is a ‘sworn statement . . . made under an oath . . .’”).

OBJECTION NO. 2: Verigy objects to and moves to strike portions of the Declaration of Romi Mayder insofar as Romi Mayder contradicted such testimony in any of his deposition sessions in the above-captioned action. **Grounds for Objection:** The testimony contradicted by Romi Mayder at his deposition should be stricken because a party cannot substitute a declaration on summary judgment for deposition testimony made during discovery. *School District No. 1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

OBJECTION NO. 3: Verigy objects to and moves to strike the statement in Paragraph 20 of the Declaration of Romi Mayder: “Wesley [Mayder] . . . was never on the board of directors of . . . STS, Inc., and is only a passive shareholder . . .” **Grounds for Objection:** This statement is contradicted by Wesley Mayder’s deposition testimony authenticating contemporaneous

1 documentation in which Romi Mayder admits on several occasions otherwise, namely that Wesley
 2 Mayder was indeed a director of STS, Inc. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions
 3 of deposition transcript of Wesley Mayder).) A party cannot substitute a declaration on summary
 4 judgment for deposition testimony made during discovery. *School District No.1J, Multnomah*
 5 *County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

6 **OBJECTION NO. 4:** Verigy objects to and moves to strike the statement in Paragraph 22
 7 of the Declaration of Romi Mayder: “Wesley [Mayder] never signed a final version of the
 8 Operating Agreement of STS LLC. “ **Grounds for Objection:** This statement is misleading and
 9 contradicted by Wesley Mayder’s deposition testimony and contemporaneous documentation
 10 which includes Wesley Mayder’s signature on the STS LLC Operating Agreement evincing
 11 Wesley Mayder’s agreement to its terms. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions
 12 of deposition transcript of Wesley Mayder).) A party cannot substitute a declaration on summary
 13 judgment for deposition testimony made during discovery. *School District No.1J, Multnomah*
 14 *County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

15 **OBJECTION NO. 5:** Verigy objects to and moves to strike the statement in Paragraph 27
 16 of the Declaration of Romi Mayder: “Neither Wesley [Mayder] nor WeDirect has ever hosted any
 17 website for STS, Inc.” **Grounds for Objection:** This statement is contradicted by Wesley
 18 Mayder’s deposition testimony and contemporaneous documentation. (*See*, Gagliardi Decl., ¶ 2
 19 and Ex. A (pertinent portions of deposition transcript of Wesley Mayder).) A party cannot
 20 substitute a declaration on summary judgment for deposition testimony made during discovery.
 21 *School District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir.
 22 1993).

23 **OBJECTION NO. 6:** Verigy objects to and moves to strike the statement in Paragraph 30
 24 of the Declaration of Romi Mayder: “Before filing the complaint, Verigy never discussed Wesley
 25 [Mayder]’s role with STS, Inc., STS LLC, or me.” **Grounds for Objection:** Immaterial and
 26 irrelevant whether Romi Mayder was interviewed by Verigy prior to the inception of litigation.
 27 Also, this statement is inappropriate legal argument masquerading as testimonial evidence. The
 28 fact of the complaint against Wesley Mayder is a matter of public record of which the Court can

1 take judicial notice; the remainder of this paragraph is embroidered argument.

2 **E. SUPPLEMENTAL DECLARATION OF ROMI MAYDER IN SUPPORT OF**
 3 **MOTION FOR SUMMARY JUDGMENT, ETC. (Docket No. 259)**

4 **OBJECTION NO. 1:** Verigy objects to and moves to strike the entire Supplemental
 5 Declaration of Romi Mayder because such declaration as submitted to the Court was not signed or
 6 sworn by him under penalty of perjury. **Grounds for Objection:** An unsigned and unsworn
 7 declaration is not evidence. *See, Mason v. Clark*, 920 F.2d 493, 495 (8th Cir. 1990) (“[A]n
 8 unsigned affidavit is a contradiction in terms. By definition an affidavit is a ‘sworn statement . . .
 9 made under an oath . . .’”).

10 **OBJECTION NO. 2:** Verigy objects to and moves to strike portions of the Supplemental
 11 Declaration of Romi Mayder insofar as Romi Mayder contradicted such testimony in any of his
 12 deposition sessions in the above-captioned action. **Grounds for Objection:** The testimony
 13 contradicted by Romi Mayder at his deposition should be stricken because a party cannot
 14 substitute a declaration on summary judgment for deposition testimony made during discovery.
 15 *School District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir.
 16 1993).

17 **OBJECTION NO. 3:** Verigy objects to and moves to strike Paragraph 3 of the
 18 Supplemental Declaration of Romi Mayder. **Grounds for Objection:** Romi Mayder lacks
 19 foundation to categorically “affirm . . . all statements” in his brother Wesley Mayder’s declaration.
 20 Also, Romi Mayder’s assertion that he is and ever was the only director of STS, Inc., is
 21 contradicted by the deposition testimony of Wesley Mayder authenticating contemporaneous
 22 documentation in which Romi Mayder, himself, admits on several occasions otherwise, namely
 23 that Wesley Mayder was indeed a director of STS, Inc. (*See, Gagliardi Decl.*, ¶ 2 and Ex. A
 24 (pertinent portions of deposition transcript of Wesley Mayder).) A party cannot substitute a
 25 declaration on summary judgment for deposition testimony made during discovery. *School*
 26 *District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

27 **OBJECTION NO. 4:** Verigy objects to and moves to strike the statement in Paragraph 4
 28 of the Supplemental Declaration of Romi Mayder: “. . . I was and am the sole director of STS,

1 Inc.” **Grounds for Objection:** This is statement is contradicted by the deposition testimony of
 2 Wesley Mayder authenticating contemporaneous documentation in which Romi Mayder, himself,
 3 admits on several occasions otherwise, namely that Wesley Mayder was indeed a director of STS,
 4 Inc. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of deposition transcript of Wesley
 5 Mayder).) A party cannot substitute a declaration on summary judgment for deposition testimony
 6 made during discovery. *School District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5
 7 F.3d 1255, 1264 (9th Cir. 1993).

8 **OBJECTION NO. 5:** Verigy objects to and moves to strike the statement in Paragraph 9
 9 of the Supplemental Declaration of Romi Mayder: “. . . there were never any signatures on . . . the
 10 STS LLC Operating Agreement . . .”. **Grounds for Objection:** This statement is contradicted by
 11 the deposition testimony of Wesley Mayder authenticating contemporaneous documentation
 12 which shows that both Romi Mayder and Wesley Mayder affixed their signatures to the STS LLC
 13 Operating Agreement. (*See*, Gagliardi Decl., ¶ 2 and Ex. A (pertinent portions of deposition
 14 transcript of Wesley Mayder).) A party cannot substitute a declaration on summary judgment for
 15 deposition testimony made during discovery. *School District No.1J, Multnomah County, Oregon*
 16 *v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

17 **OBJECTION NO. 6:** Verigy objects to and moves to strike the statement in Paragraph 10
 18 of the Supplemental Declaration of Romi Mayder: “. . . I unequivocally re-affirm that neither Wes
 19 Mayder nor Ben Francois (nor anyone else) was every on any board of directors or any other
 20 board for either STS, Inc. or for STS LLC or otherwise engaged in the management of either of
 21 these entities.” **Grounds for Objection:** This is statement is contradicted by the deposition
 22 testimony of Wesley Mayder authenticating contemporaneous documentation in which Romi
 23 Mayder, himself, admits on several occasions otherwise, namely that Wesley Mayder, and Ben
 24 Francois, was indeed a director of STS, Inc. and which evidences that Wesley Mayder was in fact
 25 involved in the management of both STS LLC and STS, Inc. (*See*, Gagliardi Decl., ¶ 2 and Ex. A
 26 (pertinent portions of deposition transcript of Wesley Mayder).) A party cannot substitute a
 27 declaration on summary judgment for deposition testimony made during discovery. *School*

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1 *District No.1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993).

2 Dated: September 3, 2008

BERGESON, LLP

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4 By: /s/
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7 VERIGY US, INC.
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